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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 244

LUIS J. NICOLE and KATHLYN M. NICOLE SAURI,
Petitioners,

v.

MERCEDES ORTIZ BERDECIA, DELORES BERDECIA and PRUDENCIO ORTIZ, *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

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June 12, 1965

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Kathlyn M. Nicole Sauri, a minor, represented and assisted by her father, Luis J. Nicole, petitioners, pray that a writ of certiorari be issued to review the judgment of the Supreme Court of Puerto Rico entered in the above-entitled case on December 4, 1964.

OPINIONS BELOW

The judgment of the Superior Court of Puerto Rico (R. 13-25) dismissing petitioners' complaint is unreported and is printed in Appendix A hereto, *infra* pp. 1a-12a. The judgment of the Supreme Court of Puerto Rico denying petitioners' petition for review (R. 49-50) is unreported and is printed in Appendix B hereto, *infra* p. 13a.

JURISDICTION

The judgment of the Supreme Court of Puerto Rico sought to be reviewed was entered December 4, 1964 and a motion for reconsideration by petitioners was denied on January 14, 1965 (R. 55). An extension of time until June 12, 1965 was granted for filing the Petition for a Writ of Certiorari.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1258 and Rule 23 of the Rules of this Court to review the judgment of denial of a Petition for Writ of Review entered by the Supreme Court of Puerto Rico.

QUESTIONS PRESENTED

1. Are petitioners entitled to a review by the Supreme Court of Puerto Rico of a decision entered by the Superior Court of Puerto Rico, Ponce Part, in violation of the constitutional right of petitioners to due process of law, in that the said decision was entered without a *scintilla* of evidence to sustain it.

2. If petitioners have a right to such judicial review by the Supreme Court of Puerto Rico, has such right been denied when the said Court summarily entered its denial without argument and without examination of the record and/or transcript of the hearing held below?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

28 U.S.C. Section 1258:

Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court as follows:

. . . .

(3) By writ of certiorari . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under the United States.

Constitution of the United States:

(a) FIFTH AMENDMENT

. . . Nor shall any person . . . be deprived of life, liberty or property without due process of law; . . . ."

(b) FOURTEENTH AMENDMENT

. . . Nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the Commonwealth of Puerto Rico:

Article II, Section 7

. . . No person shall be deprived of his liberty or property without due process of law. No person in Puerto Rico shall be denied the equal protection of the laws.

Puerto Rico Federal Relations Act, 64 Stat. 319, Title 1, L.P.R.A. Section 2, page 158:

The rights, privileges and immunities of citizens of the United States shall be respected in Puerto Rico to the same extent as though Puerto Rico were a State of the Union and subject to the provisions of paragraph 1 of Section 2 of Article IV of the Constitution of the United States.

Civil Code of Puerto Rico, Ed. 1930, Par. 4, Section 1204, L.P.R.A. Sect. 1204, equal to Section 3343 Title 31:

In questions relating to the civil status of persons, and in those regarding the validity or nullity of testamentary provisions, the presumption of the res judicata shall be valid against third persons, even if they should not have litigated.

Civil Rights Act, R.S. § 1979, 42 U.S.C. Section 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT

In September, 1962, petitioners filed a complaint for acknowledgment of filiation (R. 6-9) in the Superior Court of Puerto Rico, Ponce Part, in which they alleged that Kathlyn M. Nicole Sauri was the niece of Felix Rafael Sauri Tyrell; that the respondent Mercedes Berdecia was a legitimatized child of the other respondents Prudencio Ortiz and Dolores Berdecia

through their marriage subsequent to her birth and their acknowledgement of her in a baptismal ceremony; and that therefore respondent Mercedes Berdecia was not related by blood to petitioners. The baptismal certificate showing that Mercedes was the child of the other two respondents was received without objection as an exhibit in support of the complaint (R. 28), together with a record of school enrollment to the same effect and the marriage certificate of the respondents Prudencio Ortiz and Dolores Berdecia (R. 29). Petitioners further alleged that respondent Mercedes Berdecia had by an action of filiation filed in 1952 in Civil No. TS-52-114 in the Superior Court of Puerto Rico, Ponce Part, succeeded in establishing that she was the natural child of Felix Rafael Sauri Tyrell but that she had failed to join necessary parties to that action to-wit, her legitimate parents, the other respondents. Therefore, petitioners alleged that the 1952 action was null and void *ab initio* since it commenced after the legitimization of Mercedes as the child of the other two respondents. Petitioners alleged that their interest was to avoid having a family relationship with respondent Mercedes which was not based on blood or lawful acknowledgment.

Respondents filed a motion to dismiss which was denied (R. 10-11), and an answer that urged the court lacked jurisdiction, the issues raised were *res judicata*, and the complaint failed to state a cause of action (R. 12).

The Superior Court of Puerto Rico, Ponce Part, entered a judgment in September, 1964 (R. 13-25) dismissing the complaint on the ground that petitioners lacked standing to sue because they had failed to show an interest that was affected by the action in the other

case—Civil No. TS-52-114 and, in any event, the issues raised by the complaint were *res judicata.*

Petitioners filed with the Supreme Court of Puerto Rico a Petition for Review (R. 1-5) on October 21, 1964, urging that their interest was that their constitutional and statutory rights had been violated and that since petitioners had not been parties to the first action (indeed, the minor petitioner had not been born at the time such action was instituted), the doctrine of *res judicata* was clearly inapplicable under the laws of Puerto Rico (R. 2-3). On December 4, 1964, the Supreme Court of Puerto Rico denied the Petition for Writ of Review as a "triviality" (R. 49) without discussion or opinion.

REASONS FOR GRANTING THIS WRIT

It is clear, as a matter of law, that the laws of Puerto Rico cannot ignore or set aside arbitrarily or capriciously the rights guaranteed by both the federal and state constitutions.

It is clear, as a matter of law, that no interpretation of the statutes of the Commonwealth of Puerto Rico by a court in arbitrary proceedings can create gross injustice by such judgment of its court under color of any statute, custom or usage.

In the instant case, the validity is questioned of Par. 4, Section 1204, 3343 L.P.R.A. Title 31, Civil Code of Puerto Rico, which says:

> "In questions relating to the civil status of persons, and in those regarding the validity or nullity of testamentary provisions, the presumption of the res adjudicata shall be valid against third persons, even if they should not have litigated."

That is, due process of law requires that petitioners have their day in court, that judgment be given after a fair trial, that unimpeached and conclusive evidence on the question at bar which is admitted without objection, as in this case, be given its due weight so that the fundamental essentials granted by the Bill of Rights, both Federal and Puerto Rican, be protected for all citizens, according to a decision under said Par. 4, Sect. 1204, Civil Code, L.P.R.A.

Have the petitioners had their day in Court under the Federal and Puerto Rican Constitutions? The answer must be in the negative. Have the petitioners had a fair trial and the equal protection of the law? The answer must be in the negative. Because the civil statute of the Commonwealth of Puerto Rico in question is construed erroneously, the court has concluded that strangers to an action of filiation are barred by a judgment to the same extent as parties, although they are strangers to the litigation and not even privies to the parties involved. The Supreme Court of Puerto Rico, without any findings of facts on the errors pointed out below, without an opinion, and without even having examined the record of the case in the trial of the Court below, summarily denied the review sought. It must be assumed that the Honorable Supreme Court of Puerto Rico denied review as a matter of law, and without any consideration of the merits of the case.

It is the contention of petitioners that their constitutional right to have their action judged according to due process of law has been violated as a result of the delivery of an arbitrary order and judgment, without a scintilla of evidence to sustain such judgment. To the contrary, the unimpeached documentary evi-

dence points out the unconstitutional construction of said Par. 4, Sect. 1204 Civil Code of Puerto Rico, L.P.R.A. 3343, Title 31, by the Court below.

In the light of the above, not only the right to due process of law has been denied to petitioners, but also their right to judicial review of a clearly arbitrary and capricious judgment of *res judicata* against petitioners not according to law.

Petitioners respectfully submit that this Honorable Court should exercise jurisdiction in the instant petition to declare:

1. That Par. 4, Sect. 1204, Civil Code of Puerto Rico, denying the right to litigate to third persons who have not been parties to an action of filiation, and making them bound by judgment delivered in said actions where they have not been parties or privies of litigants in said actions, violates their right to due process of law and of equal protection of law and does not afford them their right to have their day in court, all in violation of their constitutional rights.

2. That the summary denial by the Supreme Court of Puerto Rico of the Petition for Review without a hearing, making findings of fact or conclusions of law, rendering an opinion or examining the transcript or record before the Superior Court of Puerto Rico, Ponce Part, under the circumstances of this case, constitutes a violation of the minimum standards of due process of law, in that such judicial review to which petitioners herein are entitled has in fact been denied.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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June 12, 1965

APPENDIX A

(Same Title)

Judgment

Kathlyn Nicole Saurí, assisted by her father, Luis J. Nicole, filed a complaint of acknowledgement of filiation against Mercedes Ortiz Berdecía, Dolores Berdecía, and Prudencio Ortiz.

The answer to the complaint joined the issue. The issues of *res judicata,* of lack of jurisdiction of the Court, and of lack of facts constituting a good cause of action were raised as defenses.

The hearing of the case on the merits as well as the discussion of the defenses were set for October 18, 1963. The parties appeared assisted by counsel and the questions of law raised by defendants were argued and finally submitted by the latter on the basis of the oral argument. Plaintiffs were given time to file their brief and offer evidence. The brief was filed on October 31, 1963.

The following are the antecedents of the complaint filed in this case:

On September 5, 1935, Mercedes Berdecía filed an action of filiation requesting acknowledgement by Félix Saurí Tyrell who, having been served with the complaint, failed to appear to challenge its allegations, for which reason default was entered. This case ended with a judgment for abandonment, but that judgment did not constitute *res judicata* inasmuch as the action was not pending when the Rules of 1943 went into effect.

On August 18, 1952, Mercedes Berdecía filed an action of filiation against the Heirs of Félix Saurí Tyrell on the ground of concubinage and possession of status.[1] This

[1] The allegations made herein in this connection are identical with those contained in the complaint filed September 5, 1935. See, *Berdecía* v. *Tyrell,* 82 P.R.R. 674 (1961).

proceeding culminated in the acknowledgement, by means of a judgment entered by our highest court in *Berdecía* v. *Tyrell*, 82 P.R.R. 674 (1961), where it is held that Mercedes Berdecía was born October 3, 1928, that she is the offspring of relations between Dolores Berdecía and Félix Saurí Tyrell, and that the latter died intestate December 3, 1938. That judgment was summarily affirmed by an order entered June 21, 1962, by the Court of Appeals for the First Circuit in *Tyrell* v. *Berdecía*, No. 6016.

On March 12, 1962, the Superior Court, Ponce Part, issued an order whose practical effect was to deprive Mercedes Berdecía of the hereditary rights inherent to her condition as a natural child judicially acknowledged. On January 25, 1963, the Supreme Court set aside that order and returned the case for further proceedings not inconsistent with the opinion disposing of the matter. The Judge who delivered the opinion, the Hon. Luis Blanco Lugo, took advantage of the opportunity to give the parties a very timely and wise advice (we copy from footnote 9 of said Opinion):

> "This litigation has been going on for ten years, and it is to the best interest of all parties concerned that it be definitely decided as soon as possible."

Now, on September 28, 1962, comes Katherine Mercedes Josephine Nicole Saurí, who is one and the same[2] Kathlyn Nicole Saurí, born in Ponce, December 19, 1955, and the daughter of Luis J. Nicole Santos and Isabel Saurí Tyrell.[2] She asks the Court to hold that Mercedes Berdecía is the legitimate child of Prudencio Ortiz and Dolores Berdecía; that she is not the natural child of another person (to wit, Félix Saurí Tyrell); that she be given all the rights of legitimized children and that she be recorded and regis-

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[2] Verification of Birth Certificate, Book No. 334, Entry No. 174, Section of Births of the Registry of Vital Statistics of Ponce.

tered with the surnames Ortiz and Berdecía following the name Mercedes.

In support of her claim that the questions of law raised and previously mentioned do not lie and that the action filed is pertinent, plaintiff herein makes use of several documents proving:

1. Mercedes Berdecía's birth.[3]

2. Photocopy of the above-mentioned complaint filed September 5, 1935.

3. Mercedes Berdecía's baptismal certificate, which baptism took place November 14, 1943, at La Merced Parish, where she appears as the acknowledged child of Prudencio Ortiz and Dolores Berdecía[4] and to which was attached the stenographic records establishing that in the case brought by Mercedes Berdecía v. Elizabeth Tyrell Howard et al. (No. 11,923 of the Supreme Court and TS-52-114 of the Superior Court), it was stated, as part of defendants' evidence, that in the baptismal record book of La Merced Parish she appears as the child of Prudencio Ortiz and Dolores Berdecía. There is also attached a page from a school record reading Mercedes O. Berdecía, daughter of Prudencio and Dolores.[6]

4. The marriage celebrated February 27, 1944, between Providencio Ortiz and Dolores Berdecía. Providencio is the same person as Prudencio Ortiz.[7]

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[3] Verification of Birth Certificate, Book No. 40, Entry No. 2323, Section of Births of the Registry of Vital Statistics of Ponce.

[4] See Exhibit 2 of plaintiffs in this case.

[5] See Exhibit 1 of plaintiff in this case.

[6] Exhibit B of plaintiffs in this case.

[7] Certified Verification of Marriage Certificate, Book No. 39, Entry No. 129, Marriage Section of the Registry of Vital Statistics of Ponce.

By means of that evidence and comprehensive arguments it is requested that the prayer of the complaint be granted because, in plaintiff's opinion, defendants' actions, as a whole, point at Mercedes Berdecía as the daughter of Prudencio or Providencio Ortiz and Dolores Berdecía, acknowledged by acts prior to their marriage, such as the baptism and codefendants' subsequent marriage.

In consideration of the foregoing and of the position of the parties, the Court makes the following:

CONCLUSIONS OF LAW

Recognition in favor of a child born out of wedlock, from parents who, at the moment when such child was born, could have intermarried, with or without dispensation, can be disputed by whomsoever may be affected thereby. Last and first paragraphs of 31 L.P.R.A. §§ 504 and 505 (§§ 125 and 126, Civil Code, 1930).

Although this complaint is entitled acknowledgement of filiation, its contents indicate that it is an attack alleging that the Court erred in *Berdecía* v. *Tyrell, supra.*

Plaintiff alleges that the acknowledged child is not the natural daughter of the person recognized by the Court as her father, but of another. Thus, it is sought to annul a judicial acknowledgment. This action, according to the Supreme Court of Spain in its judgment of March 1, 1947, seeks this end:

> "In cases of nullity, the existing appearance of acknowledgment may be challenged. The action does not really tend to annul an acknowledgment, but to overcome the appearance of validity."

Any person affected thereby is entitled to file this action (last paragraph, 31 L.P.R.A. § 505) either on the basis of hereditary or any other kind of rights. The decision in Rossy v. Martínez, 70 P.R.R. 703 establishes that "Forced

heirs are not the only ones entitled to challenge the acknowledgement of an alleged natural child made by its predecessor. By express provision of § 126 of the Civil Code (1930 ed.) the recognition made by the father in favor of a child who has not the status of a natural child, may be disputed by whomsoever may be affected thereby, among which are the widow and the testimentary heirs of the deceased." By analogy, we consider this principle applicable hereto. Now, in the judgment of December 24, 1913, the Supreme Court of Spain states that "recognition may be challenged by whoever thinks he is prejudiced thereby or has really been prejudiced in his rights" (of course, if it is shown that there was no prejudice, only the belief of having been prejudiced, the action does not lie.).

Strangers not parties to a suit may collaterally attack the judgment rendered if they show that they *have rights, claims, or interests which would be prejudiced or affected by compliance with said judgment.* Thus holds *Cancel* v. *Martínez,* 74 P.R.R. 100. (Italics ours.) Judgment in a legitimacy suit, where the child in question is not made a party thereto, is void and may be collaterally attacked by a person not a party to said suit provided he is adversely affected thereby. *Chabrán* v. *Méndez,* 74 P.R.R. 719.

We thus see that the gist of this action is that those having rights, claims, or interests that may be prejudiced by the terms of a judgment, may challenge the latter.

In this connection it is fitting to remember that plaintiff herein was born December 18, 1955, that is, 17 years and 15 days after the death of her maternal uncle, Félix Saurí Tyrell. Plaintiff has not proved that she is a person having, by law, the right she claims, inasmuch as the prejudice suffered by her on account of the judgment entered in *Berdecía* v. *Tyrell, supra,* has not been shown. We consider that plaintiff lacks standing to sue in this case; she is neither a forced nor a testamentary heir because, obviously, she can not be such, nor has the judgment entered

in *Berdecía* v. *Tyrell, supra,* resulted to her prejudice. It is clear that our decisions found the right to challenge a recognition on the principle that for every wrong, there is always a remedy. *García* v. *García,* 18 P.R.R. 926, mentioned in *Collazo* v. *Mouriño,* 51 P.R.R. 706, 708, *Agosto* v. *Javierre,* 77 P.R.R. 444 and *Pérez* v. *Superior Court,* 81 P.R.R. 805.

Moreover, assuming that plaintiff were included among those entitled to file such an action, the question whether the defense of *res judicata* lies, is still debatable.

Plaintiff rests her claim on the contents of the school record and the baptismal certificate where Prudencio Ortiz appears as Mercedes Berdecía's father. Of course, to this she adds the certificate of Prudencio Ortiz's marriage to Mercedes' mother in 1944.

> "Although the statements contained in a certificate of baptism *do not in themselves constitute evidence of filiation,* they constitute, nevertheless, *an element of proof which may be considered, which taken together with the other evidence introduced at the trial,* may serve to establish the right of the party." *Desmornes* v. *Unknown Heirs of Adolfo Desmornes,* 13 P.R.R. 18, 226 U.S. 145 (1907). (Italics ours.)

In *Berdecía* v. *Tyrell, supra,* at p. 684, it is stated:

> "We have compared the proof in the case at bar with that of other cases in which the recognition was granted and we believe that it successfully meets any test in respect to its sufficiency." (Cases cited, including *Desmornes* v. *Unknown Heirs of Desmornes, supra.*)

The important thing is not that the evidence be admitted without objection from the party to whom it may prejudice, but that it constitute a means of proof which, taken together with other evidence, fixes the paternity on

the person appearing as the father in the baptismal certificate.

The doctrine of *Alvarez* v. *Alvarez,* 77 P.R.R. 862, to the effect that the admissions by defendants at a pretrial conference in an action of filiation that plaintiffs are the children of the predecessor in interest, but limited to the determination, after hearing the evidence, of the status of such children, are not tantamount to the voluntary recognition of the law now in force, was rejected in *Ocasio* v. *Díaz,* (decided June 27, 1963), when the author of the opinion stated, among other things: "That the *Alvarez* case was erroneously decided and we do not feel bound by its doctrine."

This rejection does not alter things in our case. The baptismal certificate is still a means of proof of some weight and, if it is taken together with the remaining evidence heard at the trial, it would serve to establish filiation.

We make the same remark as to the school record which contains the same information as the baptismal certificate.

It was established and accepted by plaintiff that, in *Berdecía* v. *Tyrell, supra,* Mercedes Berdecía's baptismal certificate was offered as part of defendants' evidence, that is, that the trial court had the opportunity of weighing this evidence and that thereafter it held that Mercedes Berdecía was the daughter of Félix Saurí Tyrell and Dolores Berdecía. That judgment was affirmed by our Honorable Supreme Court on May 23, 1961, and summarily affirmed on June 21, 1962, by the Court of Appeals for the First Circuit in *Tyrell* v. *Berdecía,* No. 6016, and a petition for a new hearing was denied February 17, 1964, by the Honorable Supreme Court of the United States in *Tyrell, et al.* v. *Berdecía,* No. 219, 1963 October Term.

The defense of res judicata is inspired in the need to end litigations. Hence, in order to plead said defense successfully, it is necessary not only that there be perfect

identity among the things, the causes, the litigants, and the capacity of the latter, but also the previous judgment, either by its nature or by provision of law, must definitively decide the question. *Meléndez* v. *Cividanes,* 63 P.R.R. 4; *Buscaglia, Treas.* v. *Tax Court,* 72 P.R.R. 576; *Miller* v. *Cía. Ron Carioca Destilería, Inc.,* 71 P.R.R. 662, 664.

However, in *Pérez* v. *Bauzá,* 83 P.R.R. 213, and specifically at pp. 217-220, the question of *res judicata* is dealt with as follows:

> "In general terms, it may be affirmed that the rule of res judicata is based on considerations of public policy and necessity: on the one hand, the interest of the State in terminating litigations in order that judicial issues may not be perpetuated, as stated by Castán, 1 *Derecho Civil Español Común* v. *Foral* 815, and on the advisability of impressing court decisions with due dignity (Judgment of the Supreme Court of Spain of July 5, 1924, 163 Jur. Civ. 504, III), and, on the other hand, the desirability of not submitting a citizen twice to the inconveniences which the litigation of the same cause entails. The doctrine is of Roman origin and was embodied in the maxim *'res judicata pro veritate habetur.'* In its relationship with the common law, it was translated into the propositions *'interest reipublicae ut sit finis litium'* and *'nemo debet bis vexari pro eadem causa.'* In its origin it presupposed an adversative or litigious proceeding and an adjudication on the merits. However, the complexities of the modern proceeding and the increase in litigation have resulted in its extension—by statutory channels—even to decisions which have not adjudicated the controversy on its merits. Examples of this development are Rule 41(b) under consideration and Rules 11.1 and 39.1(a) of 1958, which refer respectively to the defense of res judicata which may be interposed when in a

previous action a compulsory counterclaim has not been asserted, *González* v. *Agostini,* 79 P.R.R. 481 (1956); *Sastre* v. *Cabrera,* 75 P.R.R. 1 (1953); *cf. Cruz* v. *Ortiz,* 82 P.R.R. 802 (1961), and when the same action has been abandoned more than once, *Res Judicata—Two Dismissal Rule,* 65 A.L.R2d 642 (1959).

However, the courts have refused to apply rigidly the defense of res judicata if in so doing it defeats the ends of justice, especially if reasons of public policy are involved. *In re Spinosa's Estate,* 255 P.2d 843 (Cal. 1953); *Universal Const. Co.* v. *City of Fort Lauderdale,* 68 So.2d 366 (Fla. 1953); *Commissioner of State Insurance Fund* v. *Law,* 148 N.E.2d 136 (N.Y. 1958). This is particularly true in those cases in which the previous judgment is adverse to a minor ordinarily unable to protect himself against overreaching or improper conduct of his legal representative. *In re Di Carlo,* 44 P.2d 562 (Cal. 1935). As already stated, the doctrine rests upon the basic principle that there should be an end to litigation, but if the rigid application thereof would in practice defeat a right permeated in some way with public interest, the courts are inclined to a solution which would guarantee proper justice instead of rigidly applying a fiction of law which rests fundamentally upon a principle of convenience and procedural order. *Universal Const. Co.* v. *City of Fort Lauderdale,* 68 So.2d 366 (Fla. 1953). In other words, the rule is not absolute and should always be weighed with the equally salutary principle that justice should be done in every case. *Hodgson* v. *Applegate,* 155 A.2d 97 (N.J. 1959).

"There is no question that the action of filiation which is the vehicle granted by law for determining the family status of the citizen, is clothed with a great public interest and it even has constitutional tangencies, if it is so desired, thereby affecting the in-

dividual's dignity. Article II, § 1 of the Constitution of the Commonwealth of Puerto Rico declares, precisely, that the dignity of the human being is inviolable, and defines the equality of men before the law followed by the prohibition to discriminate by reason of *birth*.

"In the specific case under consideration in which (1) the judgment set up as res judicata did not adjudicate the merits of the cause of action exercised, and which is considered as a final adjudication only by statutory provision based upon the public convenience of the finality of judgments; (2) the action of filiation is vested with a public interest; and (3) the plaintiff is a minor sought to be held responsible for the lack of diligence of his mother in order to defeat his opportunity to wipe out the stigma of spurious child, we can not apply, in the process of weighing the two doctrines in apparent conflict, a norm which would bar the exercise of the action. This is the proper case for departing from the rigidity of res judicata. On the other hand, and considered from the viewpoint of the inconveniences which may be caused to the defendant and which would justify his protection under the defense of res judicata, his only act in the previous action whose judgment is invoked consisted in filing a motion challenging the jurisdiction of the court based on a technical ground. This motion was not even set for hearing. Nor is there present the other factor regarding repeated inconveniences to a litigant.

"In *Calaf et al.* v. *Calaf*, 17 P.R.R. 185, 203-07 (1911), this Court sustained the defense of res judicata in an action of filiation. This judgment was affirmed by the United States Supreme Court. *Calaf* v. *Calaf*, 232 U.S. 371 (1914). However, the facts involved in that case were distinguishable, since the judgment invoked was entered when the Court sustained the demurrers to the complaint predicated on the lack of

standing to sue, insufficiency of facts to constitute a cause of action, ambiguity, and prescription of the action of acknowledgement. We need not, therefore, elaborate on a discussion as to when we will apply, as a general rule, such defense in actions of filiation. Each case will be decided in accordance with the surrounding circumstances."

In footnote 6, *Pérez* v. *Bauzá, supra,* we are reminded that in *Monagas* v. *Vidal,* 170 F.2d 99, 106 (1948), the Court of Appeals for the First Circuit said that this Court (referring to our Supreme Court) must be given latitude in formulating and applying its doctrine of *res judicata* so as to conform with our peculiar local situation.

In a judgment of the Supreme Court of Spain of January 25, 1912, referring to § 138 of the Spanish Civil Code —equivalent to the last paragraph of § 126 of ours (31 L.P.R.A. § 505) it is said:

"The power granted by this section to challenge the recognition of a child cannot annul, pursuant to the second paragraph of the first transitory provision of the Civil Code, a status which, on the basis of previous legislation, is judicially sanctioned in a definitive manner."[8]

Scaevola comments the above-mentioned § 138, Vol. 3, p. 425, 1942 ed., as follows:

"Which acknowledgment does the Code mean? Judicial or extrajudicial? Although, considering the words of the section, it seems to refer to the one and to the other, inasmuch as it speaks of the prescriptions of the entire section, and the latter includes both, however, judicial recognition obtained by virtue of a final judgment constitutes *res judicata* and it is not

[8] Scaevola, Vol. 3, p. 424, 1942 ed.

possible, under the principles of Procedural Law, to bring a new suit to challenge what is already beyond discussion."

The judgment entered March 10, 1959, is sought to be challenged collaterally by a person born in 1955. To admit this suit and to fail to apply the doctrine of *res judicata* would be to prolong this suit forever and to open the door to a situation which would be very prejudicial to a citizen who, on several occasions, has resorted to the courts obtaining the adjudication on the merits of the contraversy conceiving him. The defense of *res judicata* lies, regardless of our former holding that plaintiff has no standing to sue in this case.

For the reasons above stated the complaint filed in this case is dismissed, and plaintiffs are ordered to pay the costs and the amount of $500.00 as attorney's fees.

Let this Judgment be filed and served.

Ponce, Puerto Rico, September 22, 1964.

(s) QUINTÍN MORALES RAMÍREZ
Superior Judge

APPENDIX B

Order

Division composed of Mr. Justice Perez Pimentel, as Chief Judge of Division, Mr. Justice Rigau, and Mr. Justice Davila

San Juan Puerto Rico, December 4, 1964

The preceding petition for review, is hereby denied. Considering the triviality of the petition, appellants are ordered to pay $200 attorney's fees.

It was so ordered by the Court as witnesses the signature of the Chief Justice.

(s) Luis Negron Fernandez
Chief Justice

I attest:

(s) Ignacio Rivera
Secretary